

evidence which has previously been submitted to the Office in connection with the claim.

(d) Upon receipt of a request for approval of a fee, such request shall be reviewed and evaluated by the appropriate adjudication officer and a fee award issued. Any party may request reconsideration of a fee awarded by the adjudication officer. A revised or modified fee award may then be issued, if appropriate.

(e) Each request for reconsideration or review of a fee award shall be in writing and shall contain supporting statements or information pertinent to any increase or decrease requested. If a fee awarded by a deputy commissioner is disputed, such award shall be appealable directly to the Benefits Review Board. In such a fee dispute case, the record before the Board shall consist of the order of the deputy commissioner awarding or denying the fee, the application for a fee, any written statement in opposition to the fee and the documentary evidence contained in the file which verifies or refutes any item claimed in the fee application.

(Approved by the Office of Management and Budget under control number 1215-0115)

[43 FR 36772, Aug. 18, 1978, as amended at 47 FR 14696, Apr. 6, 1982]

§ 725.367 Payment of a claimant's attorney's fee by responsible operator.

(a) If an operator declines to pay any benefits on or before the 30th day after receiving written notice of its liability for a claim on the ground that there is no liability for benefits within the provisions of the Act, and the person seeking benefits shall thereafter have utilized the services of an attorney in the successful prosecution of the claim, there shall be awarded, in addition to the award of benefits, in an order, a reasonable attorney's fee against the operator or carrier in an amount approved by the deputy commissioner, administrative law judge, Board, or court as the case may be, which shall be paid promptly and directly by the operator or carrier to the claimant's attorney in a lump sum after the order becomes final.

(b) Section 205(a) of the Black Lung Benefits Amendments of 1981, Pub. L.

97-119, amended section 422 of the Act and relieved operators and carriers from liability for the payment of benefits on certain claims. Payment of benefits on those claims was made the responsibility of the Trust Fund. The claims subject to this transfer of liability are described in § 725.496 of this part. On claims subject to the transfer of liability described above the Trust Fund will pay all fees and costs which have been or will be awarded to claimant's attorneys which were or would have become the liability of an operator or carrier but for the enactment of the 1981 Amendments and which have not already been paid by such operator or carrier. Section 9501(d)(7) of the Internal Revenue Code, which was also enacted as a part of the 1981 Amendments to the Act, expressly prohibits the Trust Fund from reimbursing an operator or carrier for any attorney fees or costs which it has paid on cases subject to the transfer of liability provisions.

[48 FR 24291, May 31, 1983]

§ 725.401 Claims development—general.

After a claim has been received by the deputy commissioner, the deputy commissioner shall take such action as is necessary to develop, process, and make determinations with respect to the claim as provided in this subpart.

§ 725.402 Approved State workers' compensation law.

If a deputy commissioner determines that any claim filed under this part is one subject to adjudication under a workers' compensation law approved under part 722 of this subchapter, he or she shall advise the claimant of this determination and of the Act's requirement that the claim must be filed under the applicable State workers' compensation law. The deputy commissioner shall then prepare a proposed decision and order dismissing the claim for lack of jurisdiction pursuant to § 725.418 and proceed as appropriate.

§ 725.403 Requirement to file under State workers' compensation law—Section 415 claims.

(a) No benefits shall be payable to or on behalf of a claimant who has filed a

claim under section 415 of part B of title IV of the Act, for any period of eligibility occurring between July 1, and December 31, 1973, unless the claimant has filed and diligently pursued a claim for benefits under an applicable State workers' compensation law. A State workers' compensation claim need not be filed where filing would be futile. It shall be determined that the filing of a State claim would be futile when:

- (1) The period within which the claim may be filed under such law has expired; or
- (2) Pneumoconiosis as defined in part 718 of this subchapter is not compensable under such law; or
- (3) The maximum amount of compensation or the maximum number of compensation payments allowable under such law has already been paid; or
- (4) The claimant does not meet one or more conditions of eligibility for workers' compensation payments under applicable State law; or
- (5) The claimant otherwise establishes to the satisfaction of the Office that the filing of a claim under State law would be futile.

(b) Where the Office determines that a claimant is required to file a State claim under this section, the Office shall so notify the claimant. Such notice shall instruct the claimant to file a State claim within 30 days of such notice. If no such State claim is filed within the 30-day period, no benefits shall be payable under this part to the claimant for any period between July 1, and December 31, 1973.

(c) The failure of a claimant to comply with paragraph (a) of this section shall not absolve any operator of its liability for the payment of benefits to a claimant for periods of eligibility occurring on or after January 1, 1974.

(d) The deputy commissioner may determine that a claimant is ineligible for benefits under section 415 of part B of title IV of the Act without requiring the claimant to file a claim under a State workers' compensation law.

§ 725.404 Development of evidence—general.

(a) *Employment history.* Each claimant shall furnish the deputy commissioner

with a complete and detailed history of the coal miner's employment and, upon request, supporting documentation.

(b) *Matters of record.* Where it is necessary to obtain proof of age, marriage or termination of marriage, death, family relationship, dependency (see subpart B of this part), or any other fact which may be proven as a matter of public record, the claimant shall furnish such proof to the deputy commissioner upon request.

(c) *Documentary evidence.* If a claimant is required to submit documents to the deputy commissioner, the claimant shall submit either the original, a certified copy or a clear readable copy thereof. The Deputy commissioner or administrative law judge may require the submission of an original document or certified copy thereof, if necessary.

(d) *Submission of insufficient evidence.* In the event a claimant submits insufficient evidence regarding any matter, the deputy commissioner shall inform the claimant of what further evidence is necessary and request that such evidence be submitted within a specified reasonable time which may, upon request, be extended for good cause.

§ 725.405 Development of medical evidence; scheduling of medical examinations and tests.

(a) Upon receipt of a claim, the deputy commissioner shall ascertain whether the claim was filed by or on account of a miner as defined in § 725.202(a), and in the case of a claim filed on account of a deceased miner, whether the claim was filed by an eligible survivor of such miner as defined in subpart B of this part.

(b) In the case of a claim filed by or on behalf of a miner, the deputy commissioner shall, where necessary, schedule the claimant for a medical examination and testing under § 725.406.

(c) In the case of a claim filed by or on behalf of a survivor of a miner, the deputy commissioner shall obtain whatever medical evidence is necessary and available for the development and evaluation of the claim.

(d) The deputy commissioner shall, where appropriate, collect other evidence necessary to establish:

- (1) The nature and duration of the miner's employment; and